

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the matter of |) | |
| |) | |
| Federal-State Joint Board on Universal |) | CC Docket No. 96-45 |
| Service |) | |
| |) | DA 02-2976 |

COMMENTS OF NRTA AND OPASTCO

I. INTRODUCTION AND SUMMARY

The National Rural Telecom Association (NRTA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) (collectively, the Associations) submit these joint comments in response to the Commission's Public Notice seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding the non-rural high-cost support mechanism.¹ NRTA is an association of incumbent local exchange carriers (ILECs) that obtain financing under Rural Utilities Service (RUS) and Rural Telephone Bank (RTB) programs. OPASTCO is a trade association representing approximately 500 small ILECs serving rural areas of the United States. All of the members of both associations are rural telephone companies as defined in 47 U.S.C. §153(37).

The Associations agree with the Joint Board that its recommendations regarding the non-rural high-cost universal service support methodology do not address the high-cost mechanism for rural carriers. The Joint Board states more than once that its

Recommended Decision applies only to non-rural carriers and that some of the assumptions made in the recommendation may not be appropriate for rural carriers. Therefore, the Associations urge the Commission to maintain the stability for the method of calculating rural carrier high-cost support for at least the five-year period guaranteed by its Rural Task Force (RTF) Order. Furthermore, the distinct differences that exist between rural and non-rural carriers support the continued use of separate high-cost support mechanisms as part of any methodology that the Commission adopts in the future to replace the RTF framework.

II. THE COMMISSION AND THE JOINT BOARD HAVE CORRECTLY EXCLUDED RURAL SUPPORT FROM CONSIDERATION IN THIS PROCEEDING

In its Notice of Proposed Rulemaking (NPRM) seeking comment on the issues remanded by the 10th Circuit Court of Appeals (10th Circuit), the Commission stated that it intends to complete its review of the non-rural carrier support mechanism before beginning a further, more comprehensive review of the rural and non-rural support mechanisms.² Accordingly, the Joint Board limited the scope of its recommendation, stating unequivocally that “the Joint Board recommendations outlined in this decision apply to the non-rural high-cost universal service support mechanism and do not address the rural mechanism.”³

¹ *Comments Sought on the Recommended Decision of the Federal-State Joint Board on Universal Service Regarding the Non-Rural High-Cost Support Mechanism*, CC Docket No. 96-45, DA 02-2976 (rel. Nov. 5, 2002).

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 2999, 3012, para. 28 (2002).

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 02J-2, para. 9 (rel. Oct. 16, 2002) (Non-Rural Recommended Decision).

The Joint Board further stated that its recommended “mechanism calculates support only for non-rural carriers,” and that “[c]ertain assumptions in this Recommended Decision may not make sense for rural carriers. For example,” continued the Joint Board, “while statewide averaging is appropriate in the non-rural mechanism, it may not be appropriate for the high-cost mechanism providing support to rural carriers.”⁴ In the Joint Board's words, “[m]any rural carriers lack the economies of scale and scope of the generally larger non-rural carriers, as the Rural Task Force established in documenting differences that exist between rural and non-rural companies.”⁵

Averaging was one of the primary reasons that led the RTF to conclude that the cost proxy model could not apply to the rural carriers.⁶ It found and documented the great diversity among rural carriers themselves as well as their significant differences from the large companies with urban cores that currently are subject to the proxy model.⁷ The 10th Circuit was well aware that the Commission was treating rural carriers differently because of their distinct characteristics. The court indicated that it could not fully evaluate the sufficiency of support before the Commission acted on rural carrier issues.⁸ Moreover, the 10th Circuit also recognized expressly that “the Rural Task Force

⁴ *Ibid.*, para. 11 (footnote omitted). *See also*, para. 28 and Statement of Commissioner Michael Copps. The Joint Board later amplified in footnote 64 that it had not even been asked to consider how its non-rural mechanism would relate to other mechanisms, including the rural carrier mechanisms not involved in this phase of CC Docket No. 96-45.

⁵ *Id.*, at para. 28

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, Appendix A to the Joint Board Recommendation, 16 FCC Rcd 6165, 6182-6183 (2001) (RTF Recommendation).

⁷ *See generally*, Rural Task Force White Paper #2: The Rural Difference (<http://www.wutc.wa.gov/rtf>) (White Paper #2).

⁸ *Qwest Corp. v. FCC*, 258 F.3d 1911, 1204 (10th Circuit).

has recommended to the Joint Board that the Tenth Order's computer model not be extended to cover rural carriers.”⁹

The Commission and the Joint Board are correct in limiting the scope of this proceeding to the non-rural carrier issues that were before the court and remanded to the Commission for further explanation. Cost averaging and the problems associated with low density, low traffic volumes and the resulting higher costs of service persist in the areas served by rural telephone companies. Indeed, the Joint Board has questioned the impact of averaging on rural carriers, which the meticulous analysis and reasoning of the RTF demonstrate is not at all suitable for rural carriers. Thus, NRTA and OPASTCO urge the Commission not to try to cram the diverse and higher cost universe of rural carriers into the plan it has adopted for the non-rural carriers.

III. THE COMMISSION SHOULD PRESERVE STABILITY FOR THE METHOD OF CALCULATING RURAL CARRIER HIGH-COST SUPPORT UNTIL AT LEAST JULY 1, 2006, AS GUARANTEED BY THE RTF ORDER

In its recommendation to the Joint Board, the RTF urged that its proposals for modifying the embedded cost support methodology for rural carriers remain in place for a five-year period so that rural carriers would be provided “with predictable and stable [high-cost] funding to motivate investment over the near-term future.”¹⁰

The Commission concurred with the RTF's recommendation, stating that adoption of a modified embedded cost mechanism for rural carriers struck a fair and reasonable balance among the universal service principles contained in Section 254 of the

⁹ *Ibid.*, n. 13, citing RTF Recommendation, 16 FCC Rcd 6181.

¹⁰ RTF Recommendation, 16 FCC Rcd 6178.

Telecommunications Act of 1996 (1996 Act).¹¹ Moreover, the Commission recognized that:

[P]roviding rural telephone companies with a predictable level of universal service support during a five-year period will create a stable environment that will enable rural telephone companies to continue providing supported services at affordable rates to rural America.¹²

On this basis, the Commission determined that the RTF's modified embedded cost mechanism would remain in place for rural carriers for a five-year period, which began on July 1, 2001.¹³

The substance of the Joint Board's Non-Rural Recommended Decision exclusively addresses issues pertaining to the non-rural high-cost support mechanism. As noted above, the Joint Board explicitly states that its recommendations do not apply to the rural mechanism.¹⁴ At no point in its Recommended Decision does the Joint Board question the validity of the RTF Order's establishment of a five-year period of stability for the support methodology used for rural carriers. In addition, the Commission has yet to refer to the Joint Board the complex issue of developing a long-term universal service support plan for rural carriers, as it indicated it would.¹⁵ Consequently, any modification of the existing methodology for calculating high-cost support for rural carriers, prior to

¹¹ See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11248, para. 8 (2001) (RTF Order).

¹² *Ibid.*, 16 FCC Rcd 11309, para. 167.

¹³ *Id.*, 16 FCC Rcd 11250, para. 12.

¹⁴ Non-Rural Recommended Decision, para. 9.

¹⁵ RTF Order, 16 FCC Rcd 11310, para. 168.

July 1, 2006, would be premature and jeopardize the predictability and stability that the five-year RTF plan presently offers.

IV. THE SIGNIFICANT DIFFERENCES BETWEEN NON-RURAL AND RURAL CARRIERS JUSTIFY THE ONGOING USE OF SEPARATE HIGH-COST SUPPORT MECHANISMS

Both the Commission and the Joint Board have consistently recognized that rural LECs “face diverse circumstances and that ‘one-size-does-not-fit-all’ in considering universal service support mechanisms that are appropriate for rural carriers.”¹⁶ In light of this fact, the Commission should continue to maintain separate rural and non-rural high-cost support mechanisms when it begins to devise a long-term universal service framework for rural carriers, to be implemented sometime after the RTF regime’s expiration.

The RTF’s comprehensive study of the market and operational differences between rural and non-rural carriers makes a strong case for the continuation of bifurcated support mechanisms.¹⁷ The RTF indicated that rural carriers generally have fewer high-volume users than non-rural carriers, depriving these rural carriers of economies of scale.¹⁸ Rural carriers’ total investment in plant per loop and plant specific expenses are substantially higher than non-rural carriers.¹⁹ In addition, while both rural and non-rural carriers serve rural communities, rural carriers serve “more geographically remote areas of the nation with widely dispersed populations.”²⁰

¹⁶ *Ibid.*, 16 FCC Rcd 11247, para. 4.

¹⁷ *See generally*, White Paper #2.

¹⁸ *Ibid.*, p. 10.

¹⁹ *Id.*, pp. 12-13.

²⁰ *Id.*, pp. 8-10.

Perhaps most significant, however, is the RTF's finding that the average population density for areas served by rural carriers is only 13 persons per square mile, compared to 105 persons per square mile for areas served by non-rural providers.²¹ This indicates that while non-rural carriers may serve some high-cost, sparsely populated rural areas, the majority of their customers are in low-cost, densely populated urban areas. Consequently, this gives non-rural carriers internal averaging abilities that rural carriers do not have, making the accuracy and sufficiency of high-cost support far more critical for rural carriers than for their non-rural counterparts.

After thoroughly documenting the significant differences between rural and non-rural carriers, the RTF indicated that:

[T]he evidentiary record assembled by the Rural Task Force clearly supports a conclusion that a "one-size-fits-all" national universal service policy is unlikely to be successful in fulfilling the national universal service principles contained in the 1996 Act.²²

As a result of the RTF's recommendation, the Joint Board urged the Commission to "recogniz[e] the significant distinctions among rural carriers and between rural and non-rural carriers."²³

In a separate statement on the Joint Board's Non-Rural Recommended Decision, Commissioner Bob Rowe also pointed out the notable differences between rural and non-rural carriers and expressed serious concern about the impacts of applying the Joint Board's recommendation to rural carriers.

²¹ *Id.*, p. 10.

²² RTF Recommendation, 16 FCC Rcd 6177.

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-4, 16 FCC Rcd 6153, 6159, para. 14 (2001) (RTF Recommended Decision). *See also*, White Paper #2, p. 6.

I am greatly concerned that this decision may be applied in the future to small rural carriers. While these carriers serve a minority of rural customers nationwide, in most states they serve areas that are predominantly rural. In many cases they have few or no low-cost customers upon whom to rely for low averaged rates. Accordingly, insufficient cost-based support is a problem for relatively few of the large non-rural carriers, but it can be a matter of great importance for the customers of small rural companies.²⁴

In its Order adopting the non-rural support mechanism, the Commission recognized that its action did not necessarily portend the adoption of a similar approach for rural carriers.²⁵ Nothing has changed to make the non-rural mechanism more appropriate for rural carriers. Thus, the Commission should not mandate a “one-size-fits-all” high-cost mechanism that would threaten the ability of rural LECs to receive sufficient USF funding, as mandated by Section 254 of the 1996 Act. The continued use of a discrete rural high-cost mechanism would ensure that rural carriers have the support necessary to make investments in their networks, allowing them to offer affordable, quality service to rural consumers that is reasonably comparable to the rates and services offered in urban areas. Therefore, it is essential for the Commission to maintain a distinct high-cost support mechanism for rural carriers as part of any future successor methodology to the RTF Order’s five-year framework.

V. CONCLUSION

For the reasons set forth above, the Commission should follow the Joint Board's recommendation and the Commission's own referral NPRM and refrain from taking any action in this proceeding that could affect rural telephone companies. The RTF Order

²⁴ Non-Rural Recommended Decision, Dissenting Statement of Commissioner Bob Rowe Montana Public Service Commission, p. 15.

²⁵ See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20457, n. 136.

guarantees a stable rural high-cost mechanism for at least five years, so that these carriers have the sufficient and predictable universal service support they need to adequately serve rural consumers. The conditions that led to the creation of a separate mechanism tailored to the different circumstances and great diversity of rural telephone companies since the implementation of the 1996 Act have not changed. Therefore, the Commission should also refrain from using the non-rural carrier mechanism as a precedent or model for rural carriers in its upcoming comprehensive review of how the mechanisms relate to each other. There is simply no way to force rural companies into a non-rural company support mold as long as the two sets of companies remain as different as they have repeatedly been proven to be.

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December 20, 2002

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the joint comments by the National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies, was sent on this, the 20th day of December, 2002 by first class United States mail, postage prepaid, to those listed on the attached sheet.

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